

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

CASE NO.:

Rominov Investment Services Inc., Gustavo Johan Romer Valeri, and Nina Valentina Ivanoff De Romer,

*Plaintiff,*

vs.

William Barr; in his official capacity as Attorney General of the United States of America; Kirstjen Nielsen, in her official capacity as Secretary, U.S. Department of Homeland Security; L. Francis Cissna, in his official capacity as Director, U.S. Citizenship and Immigration Services; and Matthew D. Emrich, in his official capacity as Associate Director, Fraud Detection and National Security Directorate of the U.S. Citizenship and Immigration Services,

*Defendants.*

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**COMPLAINT**

**I. NATURE OF ACTION**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C §552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records pertaining to Plaintiffs, Rominov Investment Services Inc., Gustavo Johan Romer Valeri, and Nina Valentina Ivanoff De Romer, improperly withheld from them by the Defendants United States Department of Homeland Security (“DHS”), United States Citizenship and Immigration Services (“USCIS”), Fraud Detection and National Security Directorate of USCIS (“FDNS”) (collectively, “Defendants”). On July 3, 2018, under control number NRC2018105983, Plaintiffs

sought records related to any/all documents including annotations of administrative site visits or attempts USCIS/FDNS Orlando/Jacksonville to visit Rominov Investment Services, on or about, August 8, 2016, February 17, 2017, and all other visits. These administrative site visits were conducted in connection with Form I-129 and Form I-140 petitions that Plaintiff filed with USCIS on March 2, 2016 (EAC-16-103-52592) and February 23, 2017 (SRC-17-903-11582). (*See* Exhibit C).

2. Defendants have violated FOIA by failing to respond to Plaintiffs request within the statutorily prescribed time limit, failing to disclose the requested documents, and unlawfully withholding the requested information. Plaintiffs now seek that this Court order Defendants to respond to the request to disclose all responsive records improperly withheld from Plaintiffs.

## **II. JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §552 (a) (4) (B). This Court also has jurisdiction over this action pursuant as a federal question under to 28 U.S.C. §1331. This Court has the authority to grant declaratory relief pursuant to Declaratory Judgment Act, 28 U.S.C. §2201 *et seq.* Venue is proper under in the district under 5 USC §552 (a) (4) (B).

## **III. PARTIES**

4. Plaintiffs are Rominov Investment Services Inc. is a Corporation registered and located in Orlando, Florida. Plaintiff Rominov Investment Services Inc. filed Form I-129 petition on March 2, 2016 on behalf of Plaintiff Gustavo Johan Romer Valeri (Receipt # EAC-16-103-52592). Plaintiff Rominov Investment Services Inc. filed Form I-140 petition on February 23, 2017 on behalf of Plaintiff Gustavo Johan Romer Valeri (Receipt # SRC-17-903-11582). (*See* Exhibit C).

Plaintiff Nina Valentina Ivanoff De Romer is the derivative spouse of Plaintiff Gustavo Johan Romer Valeri on the above-mentioned petitions.

5. Plaintiffs Gustavo Johan Romer Valeri and Nina Valentina Ivanoff De Romer are included in the instant complaint as the requested administrative site visit records may be consolidated in their alien file.

6. The defendant, William Barr, is sued in his official capacity as Attorney General of the United States of America. As U.S. Attorney General, he is generally charged with enforcement of the Immigration and Nationality Act and is further authorized to delegate such powers and authority to subordinate employees of the Department of Justice (“DOJ”). 8 U.S.C. § 1103(a). USCIS is an agency within the DOJ to whom the Attorney General's authority has in part been delegated and is subject to the Attorney General's supervision. The records sought pertain to Plaintiff's immigration petitions which were filed with USCIS.

7. The defendant, Kirstjen Nielsen, is sued in her official capacity as Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Ms. Nielsen is responsible for administration and enforcement of the immigration laws of the United States. The records sought pertain to Plaintiff's immigration petitions which were filed with USCIS.

8. The defendant, L. Francis Cissna, is sued in his official capacity as Director of USCIS. As Director of USCIS, Mr. Cissna is responsible for the overall administration of USCIS and the implementation of the immigration laws of the United States. The records sought pertain to Plaintiff's immigration petitions which were filed with USCIS.

9. The defendant, Matthew D. Emrich, is sued in his official capacity as the Associate Director of the FDNS of USCIS, which is ultimately responsible for determining whether individuals filing applications for immigration benefits pose a threat to national security, public

safety, or the integrity of the nation's legal immigration system. The records sought pertain to Plaintiff's immigration petitions which were filed with USCIS.

#### **IV. STATUTORY FRAMEWORK**

10. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. §552 (a)(3)(A).

11. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. *Id.* §552 (a)(6)(A).

12. An agency must comply with a FOIA request by issuing a determination within 20 business days after receipt of the request. *Id.* §552 (a)(6)(A)(i).

13. An agency may be entitled to one ten-day extension of time to respond to a request if it provides written notice to the requester explaining that "unusual circumstances" exist that warrant additional time. *Id.* §552 (a)(6)(B).

14. An agency must immediately notify the requester of its determination whether to comply with a request, and the reasons for it, and of the right to such person to appeal an adverse determination. *Id.* §552 (a)(6)(A)(i).

15. An agency's failure to comply with any timing requirements is deemed constructive denial and satisfies the requester's requirement to exhaust administrative remedies. *Id.* § 552(a)(6)(C)(i).

16. A FOIA requester who exhausts administrative remedies may petition the court for injunctive and declaratory relief from the agency's continued withholding of public records. *Id.* § 552(a)(4)(B).

## **V. FACTS**

17. On July 3, 2018, Plaintiff Rominov Investment Services Inc. sent a request via electronic submission to USCIS National Records Center - FOIA/PA Division (“the Request”). The Request sought records related to any/all documents including annotations of administrative site visits or attempts USCIS/FDNS Orlando/Jacksonville to visit Rominov Investment Services, on or about, August 8, 2016, February 17, 2017, and all other visits. (*See Exhibit A*). These administrative visits were conducted in connection with Form I-129 and Form I-140 petitions that Plaintiff filed on March 2, 2016 (EAC-16-103-52592) and February 23, 2017 (SRC-17-903-11582). (*See Exhibit C*).

18. USCIS and FDNS are “agenc[ies]” within the meaning of 5 U.S.C. § 552(f)(1) and therefore must comply with the nondiscretionary statutory requirements of FOIA.

19. On August 8, 2018, USCIS National Records Center - FOIA/PA Division confirmed receipt of the Request by email and assigned case number NRC2018105983. The receipt stated, in part, “Due to increasing number of FOIA request received by this office, we may encounter some delay in processing your request.” In this receipt, USCIS invoked a 10-day extension to respond to the request, pursuant 5 U.S.C. § 552(a)(6)(B). (*See Exhibit B*.)

20. More than 20 days have passed since the USCIS National Records Center - FOIA/PA Division received Plaintiffs FOIA request, and it has not notified Plaintiffs as to whether it will fully comply with their request. Thus, under 5 USC §552 (a) (6) (A) and 5 USC §552 (a) (6) (C), Plaintiffs have exhausted the applicable administrative remedies with respect to their FOIA request.

21. Plaintiffs have a right of prompt access to the requested records under 5 USC §552 (a) (3) (A) and the USCIS National Records Center - FOIA/PA Division, has wrongfully withheld the sought-after documents.

## **VI. STATEMENT OF CLAIMS**

### **COUNT I: Failure to Respond to Request within Statutory Timeframe**

22. Plaintiffs re-allege and incorporate the foregoing paragraphs as if set forth in full.

23. Defendant failed to respond to the Request within the statutorily mandated timeframe, in violation of Plaintiffs rights under FOIA, including but not limited to 5 USC §§552 (a)(6)(A)(i) and (6)(B).

### **COUNT II: Failure to Produce Responsive Records**

24. Plaintiffs re-allege and incorporate the foregoing paragraphs as if set forth in full.

25. Defendants failed to make reasonable efforts to search for records responsive to the Request, in violation of Plaintiffs rights under FOIA, including but not limited to 5 U.S.C. § 552(a)(3).

26. Defendants failed to disclose and produce any records responsive to the Request, in violation of Plaintiffs rights to those records under FOIA, including but not limited to 5 U.S.C. § 552(a)(3)(A).

27. Defendants failed to disclose and produce records responsive to the Request without a legal basis for withholding such records, in violation of FOIA, including but not limited to 5 U.S.C. §§ 552(a)(3)(A) and (6)(A).

28. Plaintiffs States are entitled to their reasonable attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E).

**REQUESTED RELIEF**

Wherefore, Plaintiffs pray that this Court:

1. Declare that Defendants violated FOIA by unlawfully withholding the requested records;
2. Order Defendants to conduct a reasonable search for the requested records and to disclose them to Plaintiffs in their entireties and make copies available to Plaintiffs;
3. Provide for expeditious proceedings in this action;
4. Award Plaintiffs costs and reasonable attorney's fees incurred in this action; and
5. Grant such other relief as the Court may deem just and proper.

Dated: March 5, 2019

Respectfully submitted,

/s/

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**EXHIBIT LIST**

**Exhibit A – Copy of FOIA Request to USCIS National Records Center filed electronically, dated July 3, 2018**

**Exhibit B – Copy of FOIA Acknowledgment Letter, NRC2018105983, dated August 8, 2018**

**Exhibit C – Form I-797C, Notice of Action, I-129 Petition for a Nonimmigrant Worker, EAC-16-103-52592, dated March 2, 2016 and Form I-797C, Notice of Action, I-140 Immigrant Petition for Alien Worker, SRC-17-903-11582, dated February 23, 2017**



### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 5, 2019, I filed the foregoing document with the Clerk of the Court for the U.S. District Court for the Middle District of Florida via the CM/ECF electronic filing system. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

                    /s/                      
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March 5, 2019  
Date

### **SERVICE LIST**

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